for withholding possession. In any event, as the learned trial judge found, the non-payment by the plaintiff of this sum of $850 had nothing whatever to do with the failure on the part of the defendants to deliver the house to the plaintiff. The truth was that they were unable to get a certificate of fitness solely because of their dispute with the Public Works Department as regards payment for the connection of the water supply.

The other ground of appeal was that the learned judge was wrong in awarding damages at $100 per mensem when the plaintiff had agreed that damages should be only by way of interest at the rate of 6% per annum. A short answer to that ground is that the payment of interest 6% in the agreement was to be calculated on the amount of the initial deposit for the purchase of the land and the house. That indeed was part of the plaintiff's claim, but the learned judge disallowed it because the plaintiff herself had been given time to pay the other sum of $3,000 under the agreement.

In our judgment, damages recoverable for breach of contract for delay in the completion of an ordinary dwelling house required for personal occupation, within the first branch of the rule in *Hadley* v. *Baxendale*,[5] include the reasonable cost of living accommodation or living elsewhere and storing furniture, etc. if such expenses were in fact incurred. (See *Bow* v. *McGrath Builders*).[6] In the present case the plaintiff gave evidence that she paid rent at $100 a month for her living accommodation. That evidence was not challenged. The learned judge was therefore quite right in awarding her damages at $100 per mensem for the relevant period.

The plaintiff's cross-appeal was in relation to the costs ordered against her on the counterclaim. It was contended that this sum of $850 was due to be paid only when the keys of the house were handed to her. We did not think there was any agreement between the parties as to when this sum of $850 was to be paid, but clearly it should have been paid when the house was completed, especially when the plaintiff herself had claimed damages at the rate of $100 a month from the date of completion to the date of delivery of possession. As the defendants were partially successful on their counterclaim, we decided not to interfere with the learned judge's order as to costs on the counterclaim.

In the result we dismissed the appeal and the cross-appeal and made no order as to costs.

Appeal dismissed.

Solicitors: *Nahappan, Muthu & Peri; Gurdial Bakan Singh.*

LEE MUN FOONG v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Wan Suleiman F.J.) March 6, 1976]

[Kuala Lumpur — Federal Court Criminal Reference No. 2 of 1975]

Criminal Law and Procedure — Prevention of corruption — Money offered as bribe — Additional penalty to be paid — Whether applicable only where money subject matter of offence has not been recovered — Prevention of Corruption Act, 1961, ss. 13 and 30 — Criminal Procedure Code (F.M.S. Cap. 6), ss. 283 and 407.

Bribery and Corruption — Money offered as bribe — Additional penalty — Whether payable only where bribe has not been recovered.

In this case the appellant had been convicted under section 4(a) of the Prevention of Corruption Act, 1961 and sentenced to 2 years imprisonment. The gratification of $1,000 in this case has been handed to and accepted by the appellant in the course of a trap set by officers of the Anti-Corruption Agency and the money was recovered upon the appellant's arrest. On appeal an additional penalty of $1,000 was imposed on the appellant by the appellate court. The learned judge then reserved the following question for the Federal Court — "Whether the provisions of section 13 of the Prevention of Corruption Act, 1961, are applicable in every case of a conviction under the said Act or whether the application of section 13 is restricted only to instances where the money the subject-matter of the offence has not been recovered."

Held: the provisions of section 13 of the Prevention of Corruption Act, 1961, are applicable in every case of a conviction under the said Act and not restricted only to instances where the money and indeed any other form of gratification, the subject matter of the offence, has not been recovered.

Cases referred to:-

(1) *Mohamed bin Long* v. *Public Prosecutor* [1972] 1 M.L.J. 76.

(2) *Mahesan* v. *Public Prosecutor* [1970] 1 M.L.J. 255.

(3) *M. Gangatheram* v. *Public Prosecutor* Perak Criminal Appeal No. 25 of 1973.

(4) *Reading* v. *Attorney-General* [1951] A.C. 507.

FEDERAL COURT CRIMINAL REFERENCE.

Paramjit Singh for the applicant.

Mohtar bin Abdullah (Deputy Public Prosecutor) for the respondent.

In the High Court the following judgment was delivered on June 2, 1975:

Abdoolcader J.: The appellant was found guilty and convicted in the Special Sessions Court at Ipoh on August 17, 1972, on the following amended charge:

"That you on March 2, 1972 at about 8.45 p.m. at house No. 52, Main Road, Siputeh, in the District of Kinta, in the State of Perak, being an agent of the Government of Malaysia, namely, an Assistant Examiner attached to the Inland Revenue Department, Ipoh, did corruptly obtain a gratification for yourself, to wit, cash $1,000 from one Wong On of No. 52, Main Road, Siputeh, as an inducement for showing a favour in relation to your principal's affairs, to wit, to prepare the accounts of the said Wong On so that less income tax was to be paid pertaining to the income tax returns of the said Wong On for years of assessments from 1966 to 1971 and that you thereby committed an offence punishable under section 4(a) of the Prevention of Corruption Act, 1961 (Laws of Malaysia Act, 1957 Revised — 1971)"

and was sentenced to 2 years imprisonment.

His appeal against conviction and sentence was dismissed by me on April 1, 1975, and on the Deputy Public Prosecutor drawing my attention to the provisions of section 13 of the Prevention of Corruption Act, 1961, and the rectification by the Federal Court

of a similar omission to apply this statutory provision in *Mohamed bin Long* v. *Public Prosecutor*,[1] I imposed a penalty of $1,000 on the appellant to be paid within 3 months to the Anti-Corruption Agency and in default thereof to undergo 6 months imprisonment.

On an application made on behalf of the appellant I reserved the following question of law which I consider to be of public interest for the decision of the Federal Court:

"Whether the provisions of section 13 of the Prevention of Corruption Act, 1961 are applicable in every case of a conviction under the said Act or whether the application of section 13 is restricted only to instances where the money, the subject matter of the offence, has not been recovered."

Section 13 of the Act reads as follows:

"Where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall, in addition to imposing on that person any other punishment, order him to pay as a penalty, within the time and to the body and in the manner specified in the order, a sum which is equal to the amount of that gratification or is, in the opinion of the court, the value of that gratification, and any such penalty shall be recoverable as a fine."

In this case the gratification of $1,000 was handed over to and accepted by the appellant in the course of a trap set and the money in marked notes was recovered immediately on the appellant's arrest.

It would appear to me that the mandatory provisions of section 13 of the Act apply where there has been acceptance of any gratification in contravention of any provision of the Act irrespective of whether or not the money has been recovered. The penalty imposed by section 13 is an additional punishment and, in my view, the word "acceptance" in that section connotes just that and no more in the sense of taking or receiving what is offered without any relation to whether or not the gratification received has been recovered. If it were otherwise, I would have thought that it would have been expressly so provided.

If it were intended, as has been contended on behalf of the appellant, that the intent behind section 13 of the Act is to impose a penalty equal to the amount of the gratification only where it has not been recovered, then it might in effect well result by virtue of the joint application of the provisions of sections 13 and 30 of the Act in the person convicted being liable to disgorge twice over — by way of penalty under section 13 and a civil debt under section 30. The intent behind section 13 would seem to be its operation independently of the provisions of section 30, and recovery by a principal under the latter section without considering the prior mandatory application of section 13 in the event of acceptance and irrespective of whether or not the gratification has been recovered would appear to be a more harmonious and sensible application and construction of the two sections and the Act as a whole.

In this case it is clear that the appellant accepted the gratification and, in my view, it is immaterial for the purposes of the imposition of the penalty under section 13 whether or not that gratification was recovered from him.

[*On the application of the appellant the learned judge referred the matter to the Federal Court. In the Federal Court the following judgment was delivered.*]

Wan Suleiman F.J.: The learned judge dismissed an appeal against conviction and sentence brought by the accused against the decision of the Special Sessions Court at Ipoh where he had been charged as follows:—

"That you on March 2, 1972 at about 8.45 p.m. at house No. 52, Main Road, Siputeh, in the District of Kinta, in the State of Perak, being an agent of the Government of Malaysia, namely, an Assistant Examiner attached to the Inland Revenue Department, Ipoh, did corruptly obtain a gratification for yourself, to wit, cash $1,000 from one Wong On of No. 52, Main Road, Siputeh, as an inducement for showing a favour in relation to your principal's affairs, to wit, to prepare the accounts of the said Wong On so that less income tax was to be paid pertaining to the income tax returns of the said Wong On for years of assessments from 1966 to 1971 and that you thereby committed an offence punishable under section 4(a) of the Prevention of Corruption Act, 1961 (Laws of Malaysia Act, 1957 Revised — 1971)."

In the Sessions Court he was sentenced to two years imprisonment.

In the course of the appeal the learned judge's attention was drawn to the provisions of section 13 of the Prevention of Corruption Act and to the Federal Court decision in *Mohamed bin Long* v. *Public Prosecutor*.[1] The appellate judge in dismissing the appeal therefore imposed an additional penalty of $1,000 which was ordered to be paid within three months to the Anti-Corruption Agency and in default six months imprisonment, under section 13 of the Act. His Lordship then on the application of the appellant reserved for this court the following question of law, which he considered to be of public interest, under section 66 of the Courts of Judicature Act, 1964:—

"Whether the provisions of section 13 of the Prevention of Corruption Act, 1961 are applicable in every case of a conviction under the said Act or whether the application of section 13 is restricted only to instances where the money, the subject matter of the offence, has not been recovered."

In the case under appeal, the gratification of $1,000 had been handed over to and accepted by the appellant in the course of a trap set by officers of the agency and the money in marked notes was recovered immediately upon the appellant's arrest. The learned judge's views of the proper construction of section 13 is set out in full hereunder:—

"It would appear to me that the mandatory provisions of section 13 of the Act apply where there has been acceptance of any gratification in contravention of any provision of the Act irrespective of whether or not the money has been recovered. The penalty imposed by section 13 is an additional punishment and, in my view, the word 'acceptance' in that section connotes just that and no more in the sense of taking or receiving what is offered without any relation to whether or not the gratification received has been recovered. If it were otherwise, I would have thought it would have been expressly so provided.

If it were intended, as has been contended on behalf of the appellant, that the intent behind section 13 of the Act is to impose a penalty equal to the amount of the gratification only where it has not been recovered, then it might in effect well result by virtue of the joint application of the provisions of sections 13 and 30 of the Act in the person convicted being liable to disgorge twice over — by way of penalty under section 13 and a civil debt under section 30. The intent behind section 13 would seem to be its operation independently of the provisions of section 30, and recovery by a principal under the latter section without considering the prior mandatory application of section 13 in the event of acceptance and irrespective of whether or not the gratification has been recovered would appear to be a more harmonious and sensible application and construction of the two sections and the Act as a whole.

In this case it is clear that the appellant accepted the gratification and, in my view, it is immaterial for the purposes of the imposition of the penalty under section 13 whether or not that gratification was recovered from him."

Before us Mr. Paramjit Singh for the applicant repeated by and large the same arguments raised in the court below. He argued that the penalty in section 13 should be confined to those occasions where money, etc. has not been recovered from the person charged and found guilty of offences under the Act. He said that Parliament had in mind the forfeiture of sums which may be enormous, which had been received corruptly and which has not been recovered. He also pointed out that in *Mohamed bin Long's* case the money corruptly given had not been recovered so that this point was never in issue. He also submitted that any ambiguity should be resolved in favour of the subject and that if this section is otherwise interpreted there would be temptation to those responsible for setting traps to use substantial amounts of money so as to increase the amount of the penalty which is imposed on conviction. Regarding section 30 of the Act he pointed out that in section 13 there must be a conviction with no recovery of money or other gratification, but under section 30 the principal may recover whether there has been a conviction or not.

Apart from referring to *Mohamed bin Long's* case the learned deputy also referred to the case of *Mahesan* v *Public Prosecutor*[2] and to the unreported decision of Arulanandom J. in *M. Gangatheram* v. *Public Prosecutor*[3] as instances where orders under section 13 had been made. However, in none of these cases had the gratification given to the accused been recovered, so that they do not serve as useful guides.

I would respectfully agree with the learned judge that the mandatory penalty under section 13 of the Act must be imposed regardless of whether the gratification given is recovered or not.

I am unable to see any ambiguity in the wording of this section which from the Explanatory Statement and Comparative Table appended to it at the Bill stage, (apart from the clause "to such body and in such manner") I gather is based on section 13 of the Singapore Prevention of Corruption Ordinance, 1960. It seems to me inconceivable that if, as Encik Paramjit Singh suggests, the Legislature had in mind the forfeiture of any sums received as gratification, which had not been recovered, it would be so reticent as not to set out its intentions in clear terms.

What the section in my view, does seek to do is to enable the court, on conviction of a person for an offence under this Act, to vary the punishment in accordance with the quantum received as gratification because corruption is a species of offence where the enormity of the sum or sums received as gratification may otherwise make any sentence or fine imposed on conviction under other punishment sections quite inadequate, in its deterrent effect. Thus where the amount is small the additional imposition will be correspondingly small. However, with larger amounts the penalty which that section prescribes shall be recoverable as a fine, enables the court instead of imposing a term of imprisonment in lieu (which is restricted by section 283(c) of the Criminal Procedure Code where the offence is punishable with imprisonment exceeding 2 years to only one quarter of the maximum term of imprisonment), to cause instead the accused to disgorge pecuniarily under section 283(b)(3) of the Criminal Procedure Code where by the issue of a warrant for the levy of the amount of the penalty by distress and sale of any property belonging to the accused the deterrent effect will be greatly increased.

Moreover, where money given as gratification is recovered from the person convicted, section 407(ii) of the Criminal Procedure Code becomes applicable, and the court may apart from sentence of imprisonment or fine, order its forfeiture, confiscation or delivery to another person. This power of the court under the Criminal Procedure Code is clearly unaffected by any provision of the Act and is clearly punishment, so that the penalty under section 13 is in addition to this item of punishment as well as any sentence of imprisonment or fine imposed.

I agree with respect that the learned judge was again correct in holding that section 13 should operate independently of the provisions of section 30 which, as he puts it, is payment towards a civil debt. Section 30 is merely reaffirmation of a rule of law in the relation between agent and principal, a remedy which the principal would have even without the enactment of section 30. This rule of common law is set out in Article 54 of the Twelfth Edition of Bowstead on Agency: "No agent is permitted to acquire any personal benefit in the course of, or by means of, his agency without the knowledge and consent of the principal" and this rule extends to monies earned by the agent through criminal acts.

In *Reading* v. *Attorney-General*[4] a Sergeant in the British army stationed in Cairo, while in uniform, accompanied civilian lorries containing illicit goods through Cairo, enabling them to pass the civilian police without inspection. He was paid large sums of money for his services. The military authorities took possession of the money, and the sergeant petitioned the Crown for its return. Held: he could not recover the money. He had obtained the money by reason of his employment but in dereliction of his duty — by using his position as a sergeant and the uniform to which his rank entitled him; the Crown could retain the money even though it was earned by a criminal act.

Incidentally, the words "to such body" in section 13 appears to me to restrict orders of payment of the penalty made under this section to public bodies, so that when the principal is not a public body as defined in the Act, he can only hope to recover money or the value of gratification corruptly given to his agent under section 30 or by order made under section 407(ii) of the Criminal Procedure Code.

My answer to this question reserved for the decision of this court is that the provisions of section 13 of the Prevention of Corruption Act, 1961 are applicable in every case of a conviction under the said Act and not restricted only to instances where money and indeed any other form of gratification, the subject matter of the offence, has not been recovered.

Suffian L.P. and **Lee Hun Hoe C.J. (Borneo)** concurred.

Question answered.

Solicitors: *Seenivasagam & Sons.*